TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 903.

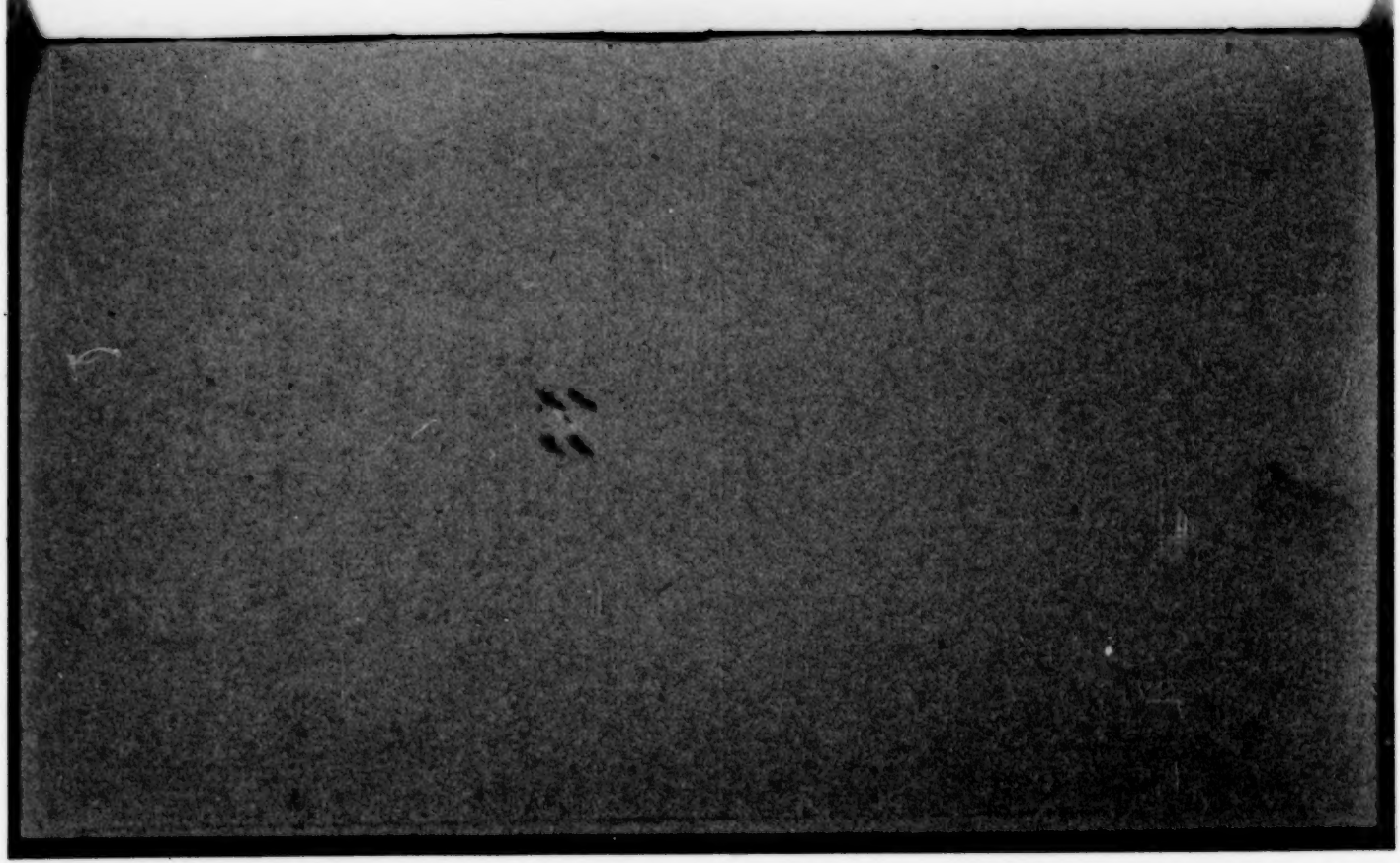
CENTRAL UNION TRUST COMPANY OF NEW YORK, INDIVIDUALLY AND AS TRUSTEE, &c., PLAINTIFF IN ERROR,

vs.

FRANCIS P. GARVAN, AS ALIEN PROPERTY CUSTODIAN.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

FILED OCTOBER 8, 1909.



(27,749)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 392.

CENTRAL UNION TRUST COMPANY OF NEW YORK, INDIVIDUALLY AND AS TRUSTEE, &c., PLAINTIFF IN ERROR,

vs.

FRANCIS P. GARVAN, AS ALIEN PROPERTY CUSTODIAN.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 21, 1920.

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a United States Circuit Court of Appeals for the Second Circuit.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant and Appellee,

vs.

$20,000 PAR VALUE COLORADO & SOUTHERN FIRST MORTGAGE 4% Bonds, Maturing in 1920, and Other Property; Central Union Trust Company of New York, Individually and as Trustee under a Deed of Trust Made by Frankfort General Insurance Company, Claimant and Appellee.

TRANSCRIPT OF RECORD.

Appeal from the District Court of the United States for the Southern District of New York.

[Stamped:] United States Circuit Court of Appeals, Second Circuit. Filed Dec. 1, 1919. William Parkin, Clerk.

1 District Court of the United States for the Southern District of New York.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant and Appellee,

against

$20,000 PAR VALUE COLORADO & SOUTHERN FIRST MORTGAGE 4% Bonds, Maturing in 1929, and Other Property; Central Union Trust Company of New York, Individually and as Trustee under a Deed of Trust Made by Frankfort General Insurance Company, Claimant and Appellant.

Statement.

1919.
June 26. Libel filed.
June 30. Bonds and other property seized by Marshal.
July 14. Claim filed.
Aug. 11. Answer filed.
Aug. 14. Motion for Judgment on the pleadings argued before A. N. Hand, J.
Sept. 11. Motion decided in favor of libellant.
Oct. 2. Final decree filed.
Oct. 22. Notice of Appeal filed.
Oct. 22. Assignment of errors filed.

2 *Libel.*

In the District Court of the United States for the Southern District of New York.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant,

vs.

$20,000 PAR VALUE COLORADO & SOUTHERN FIRST MORTGAGE 4% BONDS, MATURING IN 1929, and Other Property.

To the Honorable Judges of the District Court of the United States for the Southern District of New York:

Francis P. Garvan, as Alien Property Custodian, brings this proceeding, being in the nature of a libel of information, against the following described property, to-wit: $20,000 par value Colorado & Southern First Mortgage 4% bonds, maturing in 1929, and other property, a list of which is annexed hereto as Exhibit A; and says:

I.

That your petitioner is the Alien Property Custodian of the United States, duly appointed, qualified and acting as such on and since March 4, 1919, pursuant to the provisions of the Act of Congress approved October 6, 1917, known as the "Trading with the Enemy Act," and the amendments thereto, and the executive orders and proclamations issued thereunder; and that your petitioner on said 4th day of March, 1919, succeeded A. Mitchell Palmer, who had previously been duly appointed, qualified and acting as such Alien Property Custodian, and who resigned such office on said 4th day of March, 1919.

3

II.

That A. Mitchell Palmer, acting as such Alien Property Custodian, pursuant to the authority vested in him as such official, did heretofore on, to-wit: February 12, 1919, after investigation, determine that the Frankfort General Insurance Company, whose principal home office and address is Frankfort on Main, Germany, was an enemy not holding a license granted by the President within the purview of said Act, proclamations and executive orders; and that the following-described property, to-wit:

$20,000 par value Colorado & Southern First Mortgage 4% bonds, maturing in 1929, and other property, more particularly described and listed in schedule attached hereto as Exhibit A, and made a part hereof as fully as though written herein,

belonged to and was held for, by, on account of, or for the benefit of, said Frankfort General Insurance Company.

III.

That on, to-wit: February 12, 1919, subsequent to said investigation and determination, as aforesaid, said A. Mitchell Palmer as such Alien Property Custodian, and by virtue of the authority vested in him as such official, did require of Central Union Trust Company, a New York corporation, in whose possession or
4 under whose control said property then was, that said property be by it transferred, assigned, delivered, and paid over to him as such Alien Property Custodian, to be by him held, administered and accounted for as provided by law.

IV.

That said requirement and demand was duly served upon said Central Union Trust Company on, to-wit: February 17, 1919; and a true and correct copy thereof, as served upon said company, marked Exhibit B, is attached hereto and made a part hereof.

V.

That said requirement and demand has not been complied with; and that said property at the present time is in the custody of, or under the control of, said Central Union Trust Company within the Southern District of New York, and within the jurisdiction of this court.

VI.

That for a statement of grounds upon which the jurisdiction of this court depends, your petitioner says that this is a proceeding in the nature of a libel of information, brought under Section 17 of said "Trading with the Enemy Act," as amended, by virtue of which this court has jurisdiction to make and enter all such rules as to notice and otherwise, and all such orders and decrees, and to issue such process as may be necessary and proper in the premises to enforce the provisions of said Act.

5 VII.

That all and singular the premises are true and within the jurisdiction of this court.

Wherefore, your petitioner prays that this Court make and enter an order directing the Marshal of the Southern District of New York forthwith to seize and take possession of the property described above in Paragraph II hereof, and hold the same until further order of this Court; and that this Court make and enter an order requiring and citing all persons having or pretending to have any claim to the possession of said money or other property above described, to appear at a time and place to be fixed in said order,

then and there to show cause, if any they have, why the possession of said money and other property should not be delivered by the Marshal to your petitioner to be by your petitioner held, administered and accounted for as Alien Property Custodian in accordance with the provisions of said "Trading with the Enemy Act," as amended, and the Executive Orders and Proclamations issued thereunder; and your petitioner prays for all other relief to which in the premises he may be entitled and for all orders and decrees necessary to secure for your petitioner such relief.

[SEAL.] FRANCIS P. GARVAN,
As Alien Property Custodian.

6 DISTRICT OF COLUMBIA,
City of Washington, ss:

Francis P. Garvan, being duly sworn, says on oath that he is the Alien Property Custodian of the United States and the libellant in the above-entitled proceeding; that he has read the foregoing libel and knows the contents thereof, and that the same are true except as to such portions as are alleged on information and belief and as to these is informed and believes the same to be true.

[SEAL.] FRANCIS P. GARVAN.

Subscribed and sworn to before me this 21st day of June, 1919.

[SEAL.] ALVIN G. BELT,
Notary Public District of Columbia.

Term expires Jan. 1921.

7 **EXHIBIT A.**

Schedule.

Bonds.	Rate of interest.	How paid.	Year of maturity.	Option.	Value.
Government Bonds:					
Colorado & Southern First Mortgage	4	F. A.	1929	....	$20,000
America, United States of 2nd Converted Liberty Loan	4½	M. N.	1942	1927	31,000
Germany, Imperial Government of 2nd Year Treasury Notes	5	M. S.	1918	....	55,000
State & Municipal Bonds:					
Cleveland, O. City of	5	M. N.	1919	....	75,000
Cleveland, O. City of	4½	M. S.	1939	....	25,000
Frankfort, Germany, City of 288000 M/ at .2382	3½	M. S.	1931	....	68,601.60
New York, N. Y. City of Corporate Stock	3½	M. N.	1953	....	5,000

Railroad Bonds:

Baltimore & Ohio—Prior Lien	3½	J. J.	1925	....	30,000
Chicago & Northwestern Extension Bond of 1886	4	F. A.	1926	....	20,000
Delaware & Hudson First Refunding Mortgage	4	M. N.	1943	....	10,000
Denver & Rio Grande First Consolidated Mortgage	4½	J. J.	1936	....	20,000
Houston & Texas — First Mortgage	5	J. J.	1937	....	3,000
Illinois Central — Extended First Mortgage	3½	A. O.	1951	....	32,000
Illinois Central Collateral Trust	4	A. O.	1952	....	15,000
Union Pacific—First Ry. & Land Grant	4	J. J.	1947	....	10,000
					$419,601.60

8 EXHIBIT B.

Trust No. 1-3513.
Report No. 12609.

Alien Property Custodian.

Demand for Property.

To Central Union Trust Company of New York, as Trustee, and to all persons whom this may concern:

I, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act" approved October 6, 1917, and the amendments thereto and the Proclamations and Executive Orders issued pursuant thereto, after investigation, have determined heretofore and do hereby determine that the following property, to-wit:

All of that property particularly described, itemized and listed upon and by schedule attached hereto marked Exhibit A, each page of which is identified by the signature Thos. H. Phillips on the margins thereof,

Belongs to and is held for, by, on account of, on behalf of, or for the benefit of the Frankfort General Insurance Company which Company (whose principal Home Office and address is Frankfort on Main, Germany) I, as such Alien Property Custodian, after investigation have determined heretofore and do determine hereby to be an enemy not holding a license granted by the President within the purview of said Act, proclamations and executive orders.

As such Alien Property Custodian, I do seize such property
9 and do require of you jointly and of each of you severally that the said property shall be transferred, assigned, deliv-

ered and paid over to me as Alien Property Custodian to be by me held, administered and accounted for as provided by law.

You are further authorized and directed to make the delivery and payment of such property to the New York Trust Company of New York City (or to its order) as Liquidator and Depositary for me under and by virtue of power of authority heretofore granted to said New York Trust Company.

This demand is supplementary to that certain demand with respect to the above described property heretofore issued by me on the 18th day of November, 1918.

Witness my hand and seal of office, this 12th day of February, 1919.

[Seal of Alien Property Custodian.]

(Sgd.) A. MITCHELL PALMER,
Alien Property Custodian.

Referred for signature Division of Insurance.
(Sgd.) THOS. H. PHILLIPS,
For Chief.

Approved:
BUREAU OF LAW.

10 *Order of Service.*

In the District Court of the United States for the Southern District of New York.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant,

against

$20,000 PAR VALUE COLORADO & SOUTHERN FIRST MORTGAGE 4% BONDS, MATURING IN 1929, and Other Property.

In this cause it appearing that Francis P. Garvan, as Alien Property Custodian, has instituted a proceeding in the nature of a libel of information against certain money or other property now situated and being within the Southern District of New York, and within the jurisdiction of this Court; and it appearing that said action is brought under Section 17 of the Act of Congress known as the "Trading with the Enemy Act," as amended; and Francis G. Caffey, United States Attorney for the Southern District of New York, and proctor for libellant, having appeared and requested that this Court make and enter an order in aid of process in this cause, it is

Ordered that the Marshal of the Southern District of New York forthwith seize and take into possession the property described in the libel, which is $20,000 par value Colorado & Southern First Mortgage 4% bonds, maturing in 1929, and other property, more particularly described and itemized in the schedule attached to said libel as Exhibit A. It is further

11 Ordered that said Marshall shall upon taking possession of said property serve upon Central Union Trust Company, a New York corporation, a true copy of the libel filed in this cause, and of this order in aid of process. It is further ordered that the Marshal give notice of the seizure of said property by advertisement three times a week for two successive weeks in the New York Times, a newspaper published in said Southern District of New York. It is further

Ordered that all persons having or pretending to have any claim to possession of said property, or any part or parcel thereof, appear at a term of this Court to be held at the United States Courts in the Post Office Building, Borough of Manhattan, New York City, on the 16th day of July, 1919, at 10:30 o'clock A. M., or as soon thereafter as counsel can be heard, then and there to show cause, if any they have, why the possession of said property should not be delivered by the Marshal to the libellant, to be by him as Alien Property Custodian held, administered and accounted for according to law. It is further

Ordered that the clerk of this Court issue process accordingly.

JNO. C. KNOX,
United States District Judge.

Order of Attachment.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the Marshal of the Southern District of New York, Greeting:

12 Whereas a Libel in rem and personam hath been filed in the District Court of the United States for the Southern District of New York, on the 26th day of June in the year of our Lord one thousand nine hundred and nineteen, by Francis P. Garvan, as Alien Property Custodian, Libellant, against

Bonds.	Rate of interest.	How paid.	Year of maturity.	Option.	Value.
Goverament Bonds:					
Colorado & Southern First Mortgage	4	F. A.	1929	....	$20,000
America, United States of 2nd Converted Liberty Loan	4½	M. N.	1942	1927	31,000
Germany, Imperial Government of 2nd Year Treasury Notes	5	M. S.	1918	....	55,000
State & Municipal Bonds:					
Cleveland, O. City of.....	5	M. N.	1919	....	75,000
Cleveland, O. City of.....	4½	M. S.	1939	....	25,000
Frankfort, Germany, City of 288000 M/ at .2382..	3½	M. S.	1931	....	68,601.60
New York, N. Y. City of Corporate Stock	3½	M. N.	1953	....	5,000

Railroad Bonds:

Baltimore & Ohio—Prior Lien	3½	J. J.	1925	....	30,000
Chicago & Northwestern Extension Bond of 1886	4	F. A.	1926	....	20,000
Delaware & Hudson First Refunding Mortgage	4	M. N.	1943	....	10,000
Denver & Rio Grande First Consolidated Mortgage	4½	J. J.	1936	....	20,000
Houston & Texas — First Mortgage	5	J. J.	1937	....	3,000
Illinois Central — Extended First Mortgage	3½	A. O.	1951	....	32,000
Illinois Central Collateral Trust	4	A. O.	1952	....	15,000
Union Pacific—First Ry. & Land Grant	4	J. J.	1947	....	10,000
					$419,601.60

13 for the reasons and causes in the said Libel mentioned, and praying process; and Monition of the said Court in that behalf to be made, and that all persons interested in the said property, &c., may be cited in general and special to answer the premises, and all proceedings being had that the said property, &c., may for the causes in the said Libel mentioned, be conveyed, transferred, assigned, delivered or paid over to the Libellant, to be by him held, administered and accounted for as Alien Property Custodian in accordance with the provisions of law.

You are therefore hereby commanded to attach the said property, &c., and to detain the same in your custody until further order of the Court, respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be conveyed, transferred, assigned, delivered or paid over, pursuant to the prayer of the said Libel, that they be and appear before the said Court, to be held in and for the Southern District of New York, on the 16th day of July, 1919, at 10:30 o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And we do hereby further empower, and strictly charge and command you, the said Marshal, that you cite and admonish the said Respondent if it shall be found in your District, that it be and appear before the said District Court, on the 16th day of July, 1919, at 10:30 A. M., at the U. S. Court Rooms in
14 the U. S. Court House and Post Office Building, Borough of Manhattan, City of New York, then and — to answer the said Libel, and to make its allegations in that behalf; and have you then and there this writ, with your return thereon.

Witness, the Hon. Learned Hand, Judge of said Court, this 26th

day of June in the year of our Lord one thousand nine hundred and nineteen and of our Independence the one hundred and forty-third.

ALEX. GILCHRIST, JR.,
Clerk.

FRANCIS G. CAFFEY,
Proctor for Libellant.

Marshal's Return.

I hereby certify, that on the 30th day of June, 1919, at the City of New York, in my district, I personally served the within order upon the within-named Central Union Trust Company by exhibiting to Benjamin A. Morton as Vice-President of said Trust Company at No. 80 Broadway, N. Y. C., the within original, and at the same time leaving with him a certified copy thereof.

THOMAS D. McCARTHY,
United States Marshal,
Southern District of New York.

Dated, July 16, 1919.

14*a* *Monition.*

It is hereby stipulated that a Monition properly describing the property mentioned in the libel was duly issued and was duly served and published pursuant to law and to the order of service herein, and that the Marshal made his return thereof as follows:

Marshal's Return on Monition.

In obedience to the within Monition I attached the bonds and securities therein described on June 30, 1919, in the hands of Central Union Trust Co., at No. 80 Broadway, New York City, by exhibiting to Benjamin A. Morton, Vice-President of the Central Union Trust Co., the within original and at the same time leaving with him a certified copy thereof and at the same time and place left with him a certified copy of Libel in this suit and have given due notice as appears by proof of publication hereto annexed to all persons claiming the same that this court will on the 16th day of July, 1919, inst. (if that day shall be a day of jurisdiction, if not on the next day of jurisdiction thereafter) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

The securities named herein were placed in my Special Deposit Account at Chatham & Phœnix National Bank, No. 149 Broadway, New York City.

Dated, New York, July 16, 1919.

THOMAS D. McCARTHY,
U. S. Marshal, S. D. N. Y.

Dated, Nov. 28, 1919.

MILLER, KING, LANE & TRAFFORD,
Proctors for Claimant-Appellant.
FRANCIS G. CAFFEY,
Proctor for Libellant-Appellee.

15 *Notice of Claim.*

In the District Court of the United States for the Southern District of New York.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant,

against

$20,000 PAR VALUE COLORADO & SOUTHERN FIRST MORTGAGE 4% BONDS, MATURING IN 1929, and Other Property.

And now Central Union Trust Company of New York, as trustee under under a certain trust deed dated October 1, 1911, made by the Frankfort General Insurance Company, owner of the said $20,000 par value Colorado & Southern First Mortgage 4% Bonds, maturing in 1929, and other property more fully described in Exhibit A annexed to the libel herein, intervening as trustee under said trust deed and owner of the said bonds and other property, appears before this Honorable Court and makes claim to the said bonds and other property as the same are attached by the Marshal under process of this court at the instance of Francis P. Garvan, as Alien Property Custodian, and the said Central Union Trust Company of New York avers that as such trustee and owner it was in possession of the said bonds and other property at the time of the attachment thereof, and that it is the true and bona fide owner as such
16 trustee as aforesaid of the said bonds and other property and that no other person is the owner thereof.

Wherefore it prays to defend accordingly.

Dated, July 10th, 1919.

CENTRAL UNION TRUST COMPANY OF NEW YORK,
By BENJAMIN A. MORTON,
Vice-President.

MILLER, KING, LANE & TRAFFORD,
Proctors for Claimant.

Office and P. O. Address, 80 Broadway, Borough of Manhattan, New York City.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

Benjamin A. Morton, being duly sworn, says that he is a Vice-President of Central Union Trust Company of New York, a corporation organized and existing under and by virtue of the laws of the State of New York, the claimant above named, and the trustee under a trust deed dated October 1, 1911, executed by Frankfort General Insurance Company, a German corporation; that the statements in the foregoing claim, signed by deponent on behalf of said claimant, are true to the knowledge of the deponent except as to the matters

therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true; that under and by virtue of said trust deed the bonds and other property, against which this suit has been commenced, were held by said Central
17 Union Trust Company of New York, as trustee for the benefit of policyholders and creditors of said Frankfort General Insurance Company in the United States.

BENJAMIN A. MORTON.

Sworn to before me this 10th ——.

WILLIAM B. LOERY,
Notary Public, Richmond Co., N. Y., No. 284.

Certificate filed in New York County.
Term expires March 30, 1920.

Answer.

In the District Court of the United States for the Southern District of New York.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant,

against

$20,000 PAR VALUE COLORADO & SOUTHERN FIRST MORTGAGE 4% BONDS, MATURING IN 1929, and Other Property.

To the Honorable Judges of the District Court of the United States for the Southern District of New York:

Central Union Trust Company of New York, as trustee under a certain trust deed hereinafter described, owner and claimant
18 of the $20,000 par value Colorado & Southern First Mortgage 4% bonds maturing in 1929 and the other property proceeded against by Francis P. Garvan, as Alien Property Custodian in this proceeding, answers said libel of information and complaint, as follows:

1. This claimant admits that the petitioner is the Alien Property Custodian of the United States duly appointed, qualified and acting as such on and since March 4, 1919, pursuant to the provisions of the Act of Congress approved October 6, 1917, known as the "Trading with the Enemy Act," and the amendments thereto and the executive orders and proclamations issued thereunder; and claimant admits that the said petitioner on said 4th day of March, 1919, succeeded A. Mitchell who had previously been duly appointed and had qualified and acted as such Alien Property Custodian and resigned such office on said March 4, 1919.

Further answering paragraph marked I of the libel of information, this claimant denies that those acts of the petitioner and of said A. Mitchell Palmer, his predecessor, which related to the property libeled in this proceeding were pursuant to the provisions of

said Act of Congress and the amendments thereto and the executive orders and proclamations issued thereunder, but alleges, on the contrary, that the said acts were outside of and in abuse of the authority thus conferred upon the petitioner and his predecessor.

2. This claimant admits that the said A. Mitchell Palmer, acting as Alien Property Custodian, made his determination specified
19 in paragraph II of the said libel of information; but denies that such determination was made pursuant to the authority vested in him as Alien Property Custodian; it alleges, upon information and belief, that the only facts or documents in any way bearing on the ownership of the property libeled herein are the facts hereinafter set forth in paragraphs 7 to 16 inclusive of this answer, and it denies that the determination that the $20,000 par value Colorado & Southern First Mortgage 4% bonds, maturing in 1929, and other property more particularly described and listed in the schedule attached to the said libel marked Exhibit A belonged to, or were held for, by or on account of, or for the benefit of the said Insurance Company, was made after investigation except the ascertainment of the facts hereinabove specified.

3. This claimant admits that it is a New York corporation and that the property above described was in its possession or under its control on February 12, 1919, but, except as thus admitted, it denies the allegations contained in paragraph III of said libel of information.

4. This claimant admits that on or about February 17, 1919, it received a communication, a copy of which is attached to the libel herein, marked Exhibit B, as alleged in paragraph IV of said libel of information.

5. This claimant admits that the said requirement and demand to deliver the securities libeled herein has not been complied with. It admits that on June 30, 1919, the said property was in its custody within the Southern District of New York; but alleges that
20 the said property was on the 30th day of June, 1919, seized by the Marshal of the Southern District of New York acting under alleged process herein, and removed from the custody and possession of this claimant and has not been returned to it.

6. Except as hereinabove admitted, this claimant denies the allegations contained in the paragraph marked VII of said libel that all and singular the premises are true.

This claimant further answering alleges:

7. That by the laws of Massachusetts and, upon information and belief, by the laws of other States in this country, in which the Frankfort General Insurance Company (hereinafter referred to) has transacted the business of insurance, the total amount of the liabilities which a foreign insurance company may incur, and the

maximum amount of the several policies of insurance which it may write, are determined by the amount of its assets immediately available in this country to meet the claims of its creditors and policyholders in this country, and that the amount of said assets is considered to be the total of the amount deposited by such a foreign insurance company in the Insurance Departments of the several States of this country, together with the property transferred by such a foreign insurance company to trustees who are residents of the United States to be held in trust primarily to meet the claims of such policyholders and creditors.

That a statement of the material laws of the State of Massachusetts in force at all the times hereinafter mentioned is hereto
21 annexed, marked A and made a part of this answer.

8. That on or about the 1st day of October, 1898, the Frankfort Marine Accident and Plate Glass Insurance Company, a corporation organized under the laws of Germany, which afterwards changed its name to Frankfort General Insurance Company (hereinafter sometimes referred to as the "Insurance Company"), which on or before said date had commenced to transact insurance business in the State of Massachusetts, made, executed and delivered a deed of trust dated said 1st day of October, 1898, by which it appointed Stuyvesant Fish, Ernst Thalman and Richard Delafield trustees for the purposes and upon the trusts, covenants and agreements therein stated, substantially as follows: To receive, hold, possess and safely keep all property of every kind which should be delivered to them at any time by said Company; with power (upon consent of said Company) to invest and reinvest said property, and to that end to make all necessary sales, conveyances, etc.; to use and appropriate the said property, to satisfy the purposes mentioned in the Insurance Laws of Massachusetts hereinabove referred to (in other words, for the benefit of all the policyholders and creditors of said Company in the United States); with power to said trustees, if at any time the debts and liabilities for the security of which the trust was created should accrue and become due and payable by the said Insurance Company and should not be otherwise satisfied and paid, to appropriate so much of the trust property as might be necessary for the payment
and satisfaction thereof; and, subject to the above trust, to
22 hold the property in trust for the said Insurance Company, upon the express agreement, however, that until the outstanding liabilities and obligations absolute or contingent to policyholders or creditors in the United States should be fully paid and discharged, the said trust fund should remain in the possession of said trustees for the security and protection of said policyholders and creditors (anything in the trust agreement contained to the contrary notwithstanding), and further that there should be no withdrawal of the trust funds by the said Insurance Company until it should furnish competent evidence that all its outstanding liabilities and obligations had been duly paid and provided for. That, for the exact terms of said trust deed, reference is made to a copy thereof hereto annexed, marked Exhibit B and made a part of this answer.

9. Upon information and belief, that the said trustees accepted the trust created by said trust deed and that a certified copy of said deed was thereafter filed with the Superintendent of Insurance of the State of Massachusetts. That this claimant is the duly appointed successor of the trustees originally named in said trust deed, and that said trust deed is now in full force and effect.

10. Upon information and belief, that pursuant to the terms of said trust deed, the said Insurance Company assigned, transferred and conveyed to the trustees therein named certain cash and securities to be held by them pursuant to the terms of said trust deed, and that the securities proceeded against in this libel are securities which were held by this claimant pursuant to the terms of said deed.

23 11. That the said Insurance Company engaged in the insurance business in the State of Massachusetts and in other States of the United States, including the State of New York, and entered into many agreements and contracts insuring various persons and corporations in the United States.

Upon information and belief, that the said persons and corporations thus purchasing insurance from said Insurance Company have relied upon the protection and security afforded by the said trust deed and the property held by the trustees pursuant thereto, the terms of said trust deed having been made public by the filing of a copy thereof with the Superintendent of Insurance of the State of Massachusetts as aforesaid, and statements of the amount and character of said securities held by the said trustee having been furnished by the trustee to the Superintendents of Insurance of Massachusetts and New York, and, having been by them published in their annual reports and having been published also by the said Insurance Company.

12. Upon information and belief, that many claims against the said Insurance Company by policyholders and creditors in the United States have accrued and are now outstanding and unpaid; that the claimant cannot state the exact amount of these claims and that the amount thereof so far as known can be ascertained only by inspection of the books of the Company, which claimant alleges, upon information and belief, are in the possession of the Alien Property Custodian, but claimant alleges, upon information and belief, that the amount of said claims is more than the value of the property
24 which was held by it under the aforesaid trust deed.

13. Upon information and belief, that the said Insurance Company has heretofore issued a large number of policies of insurance insuring persons and corporations in the United States, the total amount of which policies is a very large sum, but this claimant is unable to set forth the total amount thereof for the reason that it has not access to the books and records of said Company.

Upon information and belief, that many, if not all, of the said policies of insurance have been issued to employers to protect them against judgments for damages as a result of accidental injuries, and until all suits which can be brought against such employers have

been brought and reduced to judgment, it will not be possible to ascertain the full amount of the claims which may be asserted by the said policyholders within the United States.

That by reason of the character of the obligations assumed by said Insurance Company aforesaid, it is not now possible, and in all probability it will not be possible, within six months after the end of the war for the said policyholders to ascertain the amount of their claims against the said Insurance Company, to make demand therefor, and to assert their rights to be paid out of the funds which have been held in trust for their benefit by this claimant as aforesaid.

14. That prior to October 28, 1918, A. Mitchell Palmer was duly appointed Alien Property Custodian under the provisions of the Act of Congress entitled, "Trading with the Enemy Act," approved October 6, 1917, and the amendments thereto and the executive orders and proclamations issued pursuant thereto and duly qualified and acted as such Alien Property Custodian.

That on or about February 12, 1919, the said A. Mitchell Palmer served upon this claimant a paper by which he purported to seize and demand the payment, assignment and delivery of all the property held in trust by it as aforesaid, including the property described in the libel of information herein. A copy of said demand is annexed to the libel herein marked Exhibit A and is made a part of this answer.

15. That Francis P. Garvan, the petitioner in this proceeding, was duly appointed Alien Property Custodian of the United States on or about March 4, 1919, under the provisions of the aforesaid Act of Congress and the amendments thereto and the executive orders and proclamations issued pursuant thereto, succeeding the said A. Mitchell Palmer, and since said date has acted as such Alien Property Custodian. That on June 30, 1919, the United States Marshal, acting under a warrant issued by this court upon the petition of said Alien property Custodian in this proceeding, seized from this claimant, the trustee, all the property described in the libel herein, and the same is no longer in the possession of this claimant.

16. Upon information and belief, that all the outstanding liabilities and obligations of the said Insurance Company to policyholders and creditors in the United States have not been fully paid and discharged (as required by the terms of said trust deed); and satisfactory proof has not been furnished to this claimant, the trustee, by the certificate of the Insurance Commissioner of Massachusetts, or other competent evidence, that all such outstanding liabilities and obligations have been fully paid and provided for.

17. That the securities libeled herein are not any money or property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or an ally of enemy. That the only facts or documents in any way bearing upon the ownership of the property libeled herein are the facts hereinbefore set forth in paragraphs 7 to 16 inclusive of this answer, and more especially the

said Trust Deed ("B" hereto annexed). Upon information and belief, that the Alien Property Custodian in making the determination hereinabove referred to that the property libeled is that of the said foreign Insurance Company, made no investigation except to ascertain the facts hereinabove (paragraphs 7 to 16 inclusive) specified. That the question of the ownership of the said property, if there be a question, is one of law, and that the Alien Property Custodian in making the determination aforesaid acted arbitrarily and in excess of his authority.

18. That the securities herein libeled are trust funds and that all the interests therein are equitable in their nature. That the amount of the claims in respect of said funds cannot be ascertained, and the respective rights and interests therein cannot be determined and the trustee cannot be discharged or protected in the administration of said funds except by the decree of a court of equity in a suit for a judicial settlement of its accounts as such trustee and for its discharge.

27 19. That the claimant as trustee as aforesaid is entitled to compensation for its services as such trustee. That in addition to the services which it has rendered incident to the management of said trust funds in the manner contemplated in and provided by said trust deed, it has been obliged to and has actually performed additional services not contemplated therein, owing to the demands of the said Alien Property Custodian and owing to the threatened and actual seizure of said securities. That such additional services have necessitated the constant care and attention of the claimant and its officers and employees to the business of said trust estate and have necessitated the employment of counsel and the incurring of expenses in and about the management of the said trust estate, and that it will be obliged to incur further expenses for counsel fees and disbursements in connection with the defense of this proceeding. That the amount of such expenses cannot be stated at this time, the amounts thereof being unknown to the claimant.

That the amount representing the reasonable compensation of the claimant for its services as such trustee, and the amount of the expenses which it has incurred and will be obliged to incur herein, are chargeable against the funds in its hands belonging to said trust estate. That in case this court should determine that said seizure was lawful and that said Alien Property Custodian is entitled to the possession of the property proceeded against herein, the amount due to the claimant for its services and expenses as trustee should be paid or allowed to it from the funds of said trust estate, or it should be adjudged that the said property is subject to the lien of the trustee therefor.

28 20. That all and singular the premises are true.

Wherefore this claimant prays that said libel of information may be dismissed with costs, and that the order heretofore made herein directing the Marshal of the Southern District of New York to seize and take possession of the securities mentioned in Schedule A

annexed to said libel of information be vacated, and that the court make an order restoring the said securities to the custody of this claimant; that if the court should determine that the Alien Property Custodian is entitled to the possession of the said property that the amount due to this claimant for its services and expenses as trustee be paid or allowed to it by this court from the funds of said trust estate, or that it be adjudged that the said property is subject to the lien of the trustee therefor; and for such other order or relief in the premises as to the court shall seem just.

CENTRAL UNION TRUST COMPANY
OF NEW YORK,
By BENJAMIN A. MORTON,
Vice-President, Claimant.

MILLER, KING, LANE & TRAFFORD,
Proctors for Claimant.

Office and P. O. Address, 80 Broadway, Borough of Manhattan, New York City.

29 STATE OF NEW YORK,
County of New York, ss:

Benjamin A. Morton, being duly sworn, says that he is a Vice-President of Central Union Trust Company of New York, the claimant above named, which is a domestic corporation; that he has read the foregoing answer and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

BENJAMIN A. MORTON.

Sworn to before me this 11th day of August, 1919.
WILLIAM B. LOERY,
[L. S.] *Notary Public, Richmond Co. N. Y. No.* 284.

Certificate filed in New York County.
Clerk's No. 2, Register's No. 10052.
Term expires March 30, 1920.

30 A.

The Public Statutes of Massachusetts, Chapter 119, provided, among other things, as follows:

Sec. 218. No foreign insurance company, incorporated or associated under the laws of any government or state other than one of the United States, shall make contracts of insurance in this commonwealth until it has made a deposit with the treasurer of this commonwealth, or with the proper officer of some other state of the United States, of a sum not less than the amount required by law as the

capital of like corporations organized in this commonwealth and located in the City of Boston. Such deposit may be made in the bonds of this commonwealth, or of Connecticut or New York, or in bonds or public stocks of the United States, in trust for the benefit and security of all its policy-holders in the United States; and no policy so issued to a citizen of this commonwealth shall be invalidated by the occurrence of hostilities between the government of the United States and the government under the laws of which the company was organized.

Sec. 219. The capital of every such company shall, for all the purposes of the insurance laws of this commonwealth, be deemed to be the aggregate value of its money or securities deposited as aforesaid, and all sums lent on real estate security in any state in the United States in conformity with the laws of such state providing for the investment of the assets of insurance companies therein, and all other assets in the United States in which domestic insurance companies may invest, (if such real estate securities and assets are held in the United States by trustees who are citizens of the United
31 States, and approved by the insurance commissioner, for the benefit of all its policy-holders and creditors in the United States,) after making the same deduction from such aggregate value for losses and liabilities in the United States and for premiums upon risks therein not expired as is required by the laws of this commonwealth or the regulations of its insurance department with respect to domestic insurance companies.

Sec. 220. The trustees referred to in the preceding section shall be appointed by the directors of the company, and a certified copy of the vote by which they are appointed and of the deed of trust shall be filed in the office of the insurance commissioner, who may examine such trustees under oath, and such assets, and the books and accounts relating thereto, in the same manner as he may examine the officers, agents, assets, books, and accounts of any company authorized to do insurance business in this commonwealth.

Sec. 13. If it appears to him upon an examination that a foreign insurance company is in an unsound condition, or if any such company refuses to submit to an examination as provided in Section Seven, he shall revoke all certificates of authority granted in its behalf or to its agents, and shall cause notice of such revocation to be published in the newspaper in which the general laws are published, and no new business shall be thereafter done by it or its agents in this commonwealth.

Sec. 224. No such company, and no agent of any such company, shall make contracts of insurance or expose such company
32 to loss in this commonwealth, in any one risk or hazard, to an amount exceeding ten per cent. of the value of its securities deposited with the several insurance or other departments of the states of the United States, and of its net assets in the hands of trustees appointed as provided in Section Two Hundred and Twenty for the general benefit and security of all policy-holders residing in

the United States, which are immediately available for the payment of losses in this commonwealth. * * *

Said provisions were in force October 1, 1898, when the Deed of Trust, referred to in the answer, was made, and have remained in force, in substance down to, and including, the date of this answer.

Said Section 218 of Chapter 119 of the Public Statutes of Massachusetts is now contained in substance in Chapter 576 of Acts of 1907 of said State, Sections 85 and 89; said Section 219 of Chapter 119 of the said Public Statutes is now contained in substance in Section 86 of said Act of 1907; said Section 220 of Chapter 119 of said Public Statutes is now contained in substance in said Section 86 of said Act of 1907; said Section 13 of Chapter 119 of said Public Statutes is now contained in substance in Section 87 of said Act of 1907; and said Section 224 of Chapter 119 of said Public Statutes is now contained in substance in Sections 20 and 84 of said Act of 1907.

All of said sections of Chapter 576 of the Act of 1907 are now in force.

33 B.

This indenture, made this first day of October, A. D., one thousand eight hundred and ninety-eight, between The Frankfort Marine, Accident and Plate Glass Insurance Company of Frankfort-on-the-Main, in the Empire of Germany, hereinafter called "The Company," party of the first part, and Mr. Stuyvesant Fish, Mr. Ernest Thalmann and Mr. Richard Delafield, all of the City of New York, County of New York, State of New York, and all citizens of the United States of America, parties of the second part.

Witnesseth: Whereas, it is enacted by the insurance laws of the State of Massachusetts, that the capital of every foreign insurance company doing business within the confines of the commonwealth of Massachusetts, shall be the aggregate value of its money or securities deposited with the proper officer of this or some other State and all sums loaned on real estate security in any State in the United States, in conformity with the laws of such State providing for the investment of the assets of insurance companies therein and all other assets in the United States in which insurance companies organized under the laws of this State may invest, provided, such real estate securities and assets shall be held in the United States, by Trustees, who are citizens of the United States, approved by the Insurance Commissioner for the benefit of all its policyholders and creditors in the United States, after making the same deduction from such aggregate value for losses and liabilities in the United States and for premiums upon risks therein not expired, as is authorized or
34 required by the laws of this State or the regulations of its insurance department, with respect to insurance companies organized under the laws of this State.

And whereas, the said Company is a foreign insurance company, duly organized and existing under the laws of Germany, and carrying on the business of insurance in the said State of Massachusetts

by its manager, Frederick G. Vom, of the City of New York, County of New York, State of New York, and by its duly authorized agents elsewhere in the United States, therefore, to the end that the aforesaid statute of the State of Massachusetts may be fully complied with:

Know all men by these presents, that the said Company doth hereby constitute and appoint the above-named Mr. Stuyvesant Fish, Mr. Ernest Thalmann, and Mr. Richard Delafield, all of the City of New York, County of New York, and State of New York, the parties hereto of the second part, and their successors appointed in the manner hereinafter provided, Trustees for the purposes hereinafter stated, and upon the trusts, covenants, agreements, and provisions hereinafter declared and set forth.

First. The said Trustees shall receive, hold, possess and safely keep all assets and property of every kind and description, which shall from time to time hereafter be delivered to them by the Company for the purpose of complying with the said insurance laws, the same to be held, used and appropriated to and for satisfying the purposes in the said insurance laws mentioned, and subject thereto, to be held in trust for the Company.

35 Second. The Trustees shall give proper receipts and vouchers to the Company for all the property so from time to time delivered to them by the Company, and the said Trustees shall keep a full and accurate record, inventory and account of the said property so received, and of all their transactions in relation to the same, which record, inventory and account shall at all times be open to the inspection of the Company, its duly authorized agent or agents, and the said Trustees shall from time to time, as they may be required, render and deliver to the Company, in such form as its Board of Directors may from time to time prescribe, a true, full and just account of the business of the said trust and of all the property held under the same. The statements and returns made by the Company to the Insurance Commissioner of the State of Massachusetts or to some other proper officer from time to time, as required by law, shall, so far as respects the property held in trust under this Indenture, conform to the said inventory, and account kept by the said Trustees, to the end that a copy of the said inventory and account, certified to by the proper officer, under his official seal, shall state and exhibit the property held in trust under this Indenture in the same manner as the inventory and account kept by the said Trustees.

Third. The Trustees shall have power, with the previous consent of the Company, to invest from time to time the property so as aforesaid delivered in trust, and also reinvest the same, and to this end they shall have power, with such consent as aforesaid, to

36 make all necessary sales, conveyances, assignments and transfers, and no purchaser shall be obliged to see to the application of the purchase money. It shall be the duty of the Trustees from time to time to make such investments, purchases, sales, con-

veyances and assignments permitted by law as they may be requested to make by the said company. The current interest and income of the said trust property, as it accrues and is received by the Trustees, shall be paid by them to the Company through its manager or their bankers in the United States of America.

Fourth. If at any time debts and liabilities, for the security of which this trust is created, shall accrue and become due and payable by the Company, and shall not be otherwise satisfied and paid, the Trustees shall have power to appropriate so much of the said trust property as may be necessary to the payment and satisfaction thereof, according to the true intent and meaning of the said insurance laws, but no alleged debt or liability shall be so paid or satisfied unless and until the amount and validity of the said alleged debt or liability in each case shall have been admitted by the Company, or until the validity and amount thereof have been established by the claimant in due course of law.

Fifth. The Trustees shall permit the Company from time to time, if and as occasion shall require, and the same may lawfully be done, to withdraw such proportion of the said trust property as the Company may require for the purpose of making a deposit in any
37 other State or States, as a basis for carrying on the business of insurance in such State or States, in compliance with the law thereof, and shall deliver to the Company so much of the trust property as may be lawfully delivered to the said Company for the purpose aforesaid.

Sixth. When, and as often as it shall happen that the capital of the Company, as defined in the said hereinbefore recited laws, shall exceed the amount of the capital for the time being required by the said laws in proportion to the amount of the greatest single risk in the United States, to which the Company shall be for the time being exposed, then the Trustees shall, on every request of the Company, re-transfer and deliver to the Company such of said assets and property as may be desired by the said Company, not exceeding in the whole the amount of such excess, for the time being, so that at all times during the continuance of this trust the full amount required by the law of the State of Massachusetts, and of any State of the United States, in which the said Company shall do business, shall be kept by the said Trustees for the purpose of the said trust provided for by this Indenture.

Seventh. All vacancies occurring in the trust hereby created from any cause whatsoever, shall and may be filled by the appointment by the Company of a successor or successors to the said trust, and the Trustee so appointed, upon accepting such appointment without further act or deed shall have and possess all the estate, rights
38 and powers conferred upon the said Trustees, respectively named in this instrument, in and by the provisions thereof, and shall be subject to all the duties imposed upon such Trustees respectively.

Eighth. The said Trustees, party of the second part, and their successors may at any time resign, and the vacancy created by every such resignation shall and may be filled by the Company, and the said Company shall have the power at any time, and from time to time, without assigning any cause therefor, to remove any one or more of the said Trustees or their successors, by notice of such removal in writing, and thereupon the said successor or successors to the said Trustee or Trustees so removed, the present and all other appointments made by the said Company being as required by law, subject to the approval of the Insurance Commissioner of the State of Massachusetts.

Ninth. After making due provision for the purpose aforesaid, and subject to the provisions hereinbefore contained, the Trustee shall stand possessed of the said trust fund, at the control and subject to the order of the Company, and shall and will use and dispose of the same as the Company may direct and appoint. But it is hereby expressly declared and provided, that until all the outstanding liabilities and obligations of the Company, absolute or contingent, to policy-holders or creditors in the United States, are fully paid and discharged, the said trust fund, or so much thereof as may be necessary fully to maintain the capital required by the provisions of the statute of the State of Massachusetts, or any other State or Territory
39 of the United States now in force, or which hereafter may be in force, relating to Foreign Insurance Companies, or any other laws or governmental regulations under which the Company shall transact business in any such State or Territory, in order fully to provide for all such liabilities and obligations and all expenses of any suits or proceedings relating thereto, shall remain in the possession of the said Trustees, for the security and protection of the said policy-holders and creditors, anything herein contained to the contrary notwithstanding, and before any withdrawal of such trust funds by this Company from the possession of the said Trustees or other disposition of the same, the Company shall and will furnish satisfactory proof to such Trustees by the Certificate of the Insurance Commissioner of the State of Massachusetts, or other competent evidence, that all such outstanding liabilities and obligations are fully paid and provided for.

In witness whereof, the said Company has hereunto affixed its common seal, and the said parties hereto of the second part have hereunto set their hands and seals the day and year first above written.

(Signed) FRANKFORT MARINE, ACCIDENT AND PLATE GLASS INSURANCE COMPANY.

(Signed) CARL HOFF,
Vice President.

(Signed) P. DUMCKE,
General Manager.

(Signed) E. EHRHARD, [SEAL.]
Manager.

(Signed) STUYVESANT FISH. [SEAL.]

(Signed) ERNST THALMANN. [SEAL.]

(Signed) RICHARD DELAFIELD. [SEAL.]

40 STATE, CITY AND COUNTY OF NEW YORK, *ss:*

On this 21st day of September, A. D. 1898, before me personally appeared Stuyvesant Fish and Richard Delafield to me known and known to me to be the persons described in and who executed the foregoing instrument, and they each severally, personally to me acknowledged that they executed the same for the uses and purposes therein set forth.

In witness whereof, I have hereunto set my hand and affixed my notarial seal of office the day and year above written.

(Signed) M. V. R. WEYANT,
[SEAL.] *Notary Public, Kings County.*

Certificate filed in N. Y. County.

41 Consulate General of the United States of America, City of Berlin, Kingdom of Prussia, German Empire, ss:

On this 7th day of October in the year 1898, before me personally came Ernst Thalmann, known to me and to me known to be the individual described in and who executed the above and foregoing instrument and acknowledged that he executed the same for the purposes therein mentioned.

Witness my hand and consular seal of office this 7th day of October A. D. 1898.

(Signed) CHAS. H. DAY,
[SEAL.] *Vice and Acting Consul General of the United States of America at Berlin.*

No. 1106.

Der atellvertretende Vorsitzende des Aufsichtsrathes der dahier domizilirten Aktiengesellschaft mit der Firma "Frankfurter Transport-Unfallund Glas-Versicherungs-Actien-Gesellschaft," Kaufmann Carl Hoff dahier; sowie die beiden Vorstandsmitglieder, Generaldirektor Paul Dumcke dahier under Direktor Emil Ehrhard dahier, haben vor mir Notar ihre umstehanden Unterschriften als eigenhandig vollzogen anerkannt, was ich mit dem Anfugen beglaubige, dass nach dem Gesellschaftsstatut und den hiesigen die Genannten zur Vertretung und Zsichnung befugt sind, und zwar die beidon Vorstandsmitglieder zur gameinschaftlichen Vertretung der Gesellschaft, Carl Hoff zur Vertretung fur den Aufsich-
42 tarath. Frankfurt am Main, den Zweiten Dezember Actszehnhundertachtundenunzig.

Der Konigliche Notar Justizrath.
(Signed) Dr. WILHELM KILZER.

Not. Reg. 814/98.
Gebuhr §42 (4/10) M.2.30.
Stempel zur Beglaubigung M.1.50 [SEAL.]
Berechnet nach §22 M.4.30.
(Initialled) Dr. W. K.

UNITED STATES CONSULATE GENERAL,
Frankfort-on-the-Main, Empire of Germany, ss:

I, Frank H. Mason, Consul-General of the United States of America at Frankfort-on-the-Main, in the Empire of Germany, hereby certify that Dr. Wilhelm Kilzer, whose signature is subscribed to the foregoing instrument, was, at the time of subscribing the same, a Royal Prussian Notary, in and for the City of Frankfort-on-Main, duly commissioned and by law authorized to execute such acts, and that his signature and official seal affixed thereto are genuine, and as such are entitled to full faith and credit.

Witness my signature and seal of office, this 3d day of December, in the year 1898.

[SEAL.] (Signed) FRANK H. MASON,
U. S. Consul-General.

No. 640

Q$2.00

=M8.40

43 *Notice of Motion.*

District Court of the United States, Southern District of New York.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant,

against

TWENTY THOUSAND DOLLARS ($20,000) PAR VALUE COLORADO & Southern First Mortgage 4% Bonds, Maturing 1929, and Other Property.

Sirs:

Please Take Notice that on the libel, notice of claim and answer heretofore filed herein, and upon all proceedings heretofore had herein, I shall move this Court at a term thereof for the hearing of motions to be held in the United States Court and Post Office Building, Borough of Manhattan, City of New York, on the 14th day of August, 1919, at the opening of court or as soon thereafter as counsel may be heard for a decree awarding possession to the libellant as Alien Property Custodian of the property seized in this proceeding by the United States Marshal for the Southern District of New York, being the property specified in Exhibit A, attached to the libel, and awarding to the libellant herein the costs of this

proceeding to be duly taxed and for such other relief as in
44 the premises may seem just.

Dated, New York, August 11, 1919.

Yours, etc.,

FRANCIS G. CAFFEY,
United States Attorney for the Southern District of New York,
Proctor for Libellant.

Office and P. O. Address, U. S. Courts & Post Office Bldg., Borough of Manhattan, City of New York.

To Messrs. Miller, King, Lane & Trafford, Proctors for Claimant, Central Union Trust Company of New York.

45 *Opinion.*

United States District Court, Southern District of New York.

FRANCIS P. GARVAN, as Alien Property Custodian, Libelant,

against

$20,000 PAR VALUE COLORADO & SOUTHERN FIRST MORTGAGE 4% BONDS, MATURING IN 1929, and Other Property.

FRANCIS P. GARVAN, as Alien Property Custodian, Libelant,

against

$100,000 PAR VALUE ST. PAUL & KANSAS CITY SHORT LINE RAILROAD COMPANY FIRST MORTGAGE 4½% BONDS, MATURING IN 1941, and Other Property.

Miller, King, Lane & Trafford, Proctors for Central Union Trust Co. of New York, as Trustee-Claimant in first proceeding, Proctors for Edwin G. Merrill et al., as Trustees-Claimants in the second proceeding.

Francis G. Caffey, United States Attorney, Proctor for Alien Property Custodian.

Spier Whitaker and Earl B. Barnes, Counsel.

AUGUSTUS N. HAND, *District Judge:*

The argument of the proctors for the trustees is persuasive, but the great difficulty which inheres in their position is their
46 practical admission that Section 8-*a* of the Trading With The Enemy Act is of no real significance. I think it must be further admitted, if their position is sound, that this section as originally proposed was of no importance. I reached the conclusion in the Munich Insurance Company case that a trust which involved practically no duties on the part of the trustee, except to hold property and pay policy-holders who have established their

claims by judgment or secured the consent of the alien insurance company to payment, did not create a lien which entitled the trustee to "continue to hold" the res under the provisions of the Act. In other words, I regarded mere holding liens as leaving the ownership so far in the pledgor or settlor as to enable the Alien Property Custodian to exercise his possessory rights under Section 7-c of the Act. The argument that such a construction would exempt from liquidation by a trustee liens which are enforcible without notice or demand is not reasonable. All liens which can be enforced without notice or demand can be enforced equally after such notice. The greater includes the less. Nor can I see any practical difficulty which would arise from such a construction as I adopted in the Munich case while convenient administration of the enemy aliens' property would seem to favor it. The provisions of Section 8-*a* can only thus be given any real meaning. I shall adhere to my former ruling and grant a decree to each libellant, but as the cases are not free from doubt I shall allow a stay pending an appeal, if the same is taken within twenty days.

Sept. 11, 1919.

A. N. H.,
D. J.

47 *Decree.*

At a Stated Term of the District Court of the United States of America for the Southern District of New York, Held at the United States Court and Post Office Building in the City of New York, in the said District, on the 2nd Day of October in the Year of Our Lord One Thousand Nine Hundred and Nineteen.

Present: The Honorable Augustus N. Hand, District Judge.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant,

against

$20,000 PAR VALUE COLORADO & SOUTHERN FIRST MORTGAGE 4% BONDS, MATURING IN 1929, and Other Property.

This cause on to be heard at this term and was argued by counsel and thereupon upon consideration thereof it was

Ordered, adjudged and decreed as follows, viz.:

That the libellant herein have judgment awarding to him possession of the bonds, stocks and other securities described in Exhibit "A" annexed to the libel herein, to be by him held, administered and accounted for as Alien Property Custodian;

That the United States Marshal for the Southern District of New York deliver to the libellant as Alien Property Custodian the

48 bonds, stocks and other securities described in Exhibit "A" annexed to the libel herein and heretofore seized by him;

And the libellant's costs having been duly taxed herein in the sum of One hundred thirty and 93/100 ($130.93) it is

Further ordered, adjudged and decreed that the libellant recover of the claimant, Central Union Trust Company of New York as Trustee, and of National Surety Company, a corporation organized under the laws of the State of New York, the stipulator for costs herein, the sum of One hundred thirty and 93/100 ($130.93) as costs duly taxed and that execution issue therefor;

That unless an appeal be taken from this decree on behalf of the claimant within the time fixed by the rules of this Court, the stipulator for costs on the part of the claimant shall cause the engagement of its stipulation to be performed or show cause within four days' time why judgment and execution shall not issue against it, its goods, chattels and accounts for the satisfaction of this decree;

That all proceedings herein shall be without prejudice to the claimant or to any other persons with respect to any claims they may see fit to file with the Alien Property Custodian pursuant to Section 9 of the Trading with the Enemy Act or any suit they may see fit to institute thereunder after the filing of their claims.

AUGUSTUS N. HAND,
U. S. D. J.

49 *Notice of Appeal.*

District Court of the United States for the Southern District of New York.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant and Appellee,

against

$20,000 PAR VALUE COLORADO & SOUTHERN FIRST MORTGAGE 4% Bonds, Maturing in 1929, and Other Property; Central Union Trust Company of New York, Individually and as Trustee under a Deed of Trust Made by Frankfort General Insurance Company, Claimant and Appellant.

SIR:

Take notice that the claimant above named hereby appeals to the United States Circuit Court of Appeals for the Second Circuit, from the final decree entered herein October 2, 1919.

Dated, New York, October 22, 1919.

Yours, &c.,

MILLER, KING, LANE & TRAFFORD,
Proctors for Claimant and Appellant.

Office and P. O. Address, 80 Broadway, Borough of Manhattan, New York City.

To Francis G. Caffey, Esq., United States Attorney, Proctor for Libellant and Appellee.

Alexander Gilchrist, Jr., Esq., Clerk of the District Court of the United States for the Southern District of New York.

50 *Assignments of Error.*

District Court of the United States for the Southern District of New York.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant and Appellee,

against

$20,000 PAR VALUE COLORADO & SOUTHERN FIRST MORTGAGE 4% Bonds, Maturing in 1929, and Other Property; Central Union Trust Company of New York, Individually and as Trustee under a Deed of Trust Made by Frankfort General Insurance Company, Claimant and Appellant.

The Claimant, Central Union Trust Company of New York, individually and as trustee under a deed of trust made by Frankfort General Insurance Company, complains of errors in the proceedings in this case in the District Court of the United States for the Southern District of New York and in the decree rendered therein, and assigns the following as the errors complained of:

1. The Court erred in holding that the libellant was entitled to the relief granted herein or to any relief, and in not holding that the said libel should be dismissed.

2. The Court erred in adjudging that the libellant was entitled to the possession of the property described in the libel.

51 3. The Court erred in adjudging that the libellant was entitled to the possession of the property described in the libel to be by him held, administered and accounted for as Alien Property Custodian.

4. The Court erred in adjudging that the United States Marshal for the Southern District of New York should deliver to the libellant the said property described in the libel.

5. The Court erred in holding that, under the provisions of the Trading with the Enemy Act, the libellant is entitled to the possession of the property described in the libel.

6. The Court erred in holding that the Trading with the Enemy Act gave to the libellant any authority or jurisdiction over the property described in said libel.

7. The Court erred in not holding that the acts of the libellant and of A. Mitchell Palmer, his predecessor as Alien Property Custodian, which related to the property libelled in this proceeding, were not done pursuant to the provisions of the Trading with the Enemy Act.

8. The Court erred in not holding that the Trading with the Enemy Act does not authorize the seizure of property of American citizens because an enemy has some right in or claim against it.

9. The Court erred in not holding that section 7 (*c*) of the Trading with the Enemy Act is the only portion of the Act which defines the property which may be seized by or shall be transferred to the Alien Property Custodian.

10. The Court erred in not holding that the only property which the Alien Property Custodian is entitled to seize
52 is property owned by enemies and the rights and claims of enemies in or against property which is owned by American citizens or in which American citizens have the right of possession.

11. The Court erred in holding that the property described in the libel herein belongs to an enemy alien corporation.

12. The Court erred in holding that the property described in the libel was property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of any enemy or an ally of enemy within the contemplation of the Trading with the Enemy Act.

13. The Court erred in holding that the ownership of the property conveyed by the trust deed to this claimant remained so far in the maker of the trust as to enable the Alien Property Custodian to exercise possessory rights under section 7 (*c*) of the Trading with the Enemy Act.

14. The Court erred in holding that under section 7 (*c*) of the Trading with the Enemy Act possessory rights in the property libelled herein were conferred upon the Alien Property Custodian.

15. The Court erred in holding that the trust created by the deed to the claimant herein involved practically no duties on the part of the trustee except to hold property and pay policyholders who have established their claims by judgment or secured the consent of the alien insurance company to payment.

53 16. The Court erred in holding that the right of the trustee to apply the property libelled herein upon an admission of indebtedness by the company or after decree of the court are the rights of mere passive trustees or custodians.

17. The Court erred in holding that the right of the trustee herein was only in the nature of a lien and to be determined by the principles applicable to liens.

18. The court erred in holding that -he deed of trust herein did not create a lien which entitled the trustee, this claimant, to continue to hold the res under the provisions of the Trading with the Enemy Act.

19. The Court erred in holding that the trust deed herein created no more than a possessory lien without right on the part of the trustee to enforce it.

20. The Court erred in holding that the trustee, the claimant herein, held the securities solely for convenience because the creditors sought to be protected are contingent and numerous.

20-*a*. The Court erred in holding that a right to retain possession is given only to those lienors whose business requirements naturally demanded it.

20-*b*. The Court erred in holding that the trustee herein is not of the class whose rights are preserved by the Trading with the Enemy Act and are consequently not entitled to retain possession as against the Alien Property Custodian.

54 20-*c*. The Court erred in not holding that the rights of this trustee and of those having a primary right as beneficiaries in the trust estate were such as to require that the trustee retain possession of the property libelled herein.

21. The Court erred in holding that the right of the trustee under the trust deed herein to hold the property conveyed to it under said trust was not covered or protected by the terms of said Section 8 (*a*).

21-*a*. The Court erred in holding that the Trading with the Enemy Act gave to the Alien Property Custodian the right to obtain possession of enemy-owned property irrespective of the existence of liens thereon, unless such liens may be disposed of on notice or presentation or demand.

22. The Court erred in holding that Section 8 (*a*) of the Trading with the Enemy Act preserved the rights and remedies of lienors only in a limited class of cases, to wit: those where the mortgage, pledge or lien or other right in the nature of security in property of an enemy or ally of enemy was one which by law or by the terms of the instrument creating such mortgage, pledge or lien or right, may be disposed of on notice or presentation or demand.

23. The Court erred in holding that because the rights of the claimant herein as trustee were not expressly excepted from the operation of Section 8 (*a*) of the Trading with the Enemy Act they became subject to seizure as the property of an alien enemy.

55 24. The Court erred in not holding that the claimant was the owner of the legal title to the property described in the libel.

25. The Court erred in not holding that the trustee herein is not mere lienor, but the owner of the property, and that the Trading with the Enemy Act does not authorize the taking of the property libelled herein from its possession.

26. The Court erred in holding that the claimant had a mere lien upon the property described in the libel.

27. The Court erred in not holding that the claimant was entitled to continue to hold the property described in the libel until the purposes for which the trust had been created had been completed.

27-*a*. The Court erred in not holding that the claimant has a lien upon the property described in the libel for the value of its services and the amount of its expenses as trustee under the trust deed made by the Frankfort General Insurance Company.

28. The Court erred in not holding that the claimant is entitled to the possession of the property described in the libel for the purpose of enforcing its lien thereon for the value of its services and the amount of its expenses as trustee under the trust deed made by the Frankfort General Insurance Company.

29. The Court erred in not holding that the claimant is entitled to retain possession of a part of the property described in the
56 libel sufficient to satisfy its claims for the value of its services and the amount of its expenses as trustee under the trust deed.

30. The Court erred in not holding that the trustee has a lien upon the fund for its compensation and the amount of its expenses, including counsel fees, and that its right to retain the libelled property in its possession to satisfy the said lien is protected by the Trading with the Enemy Act or is not interfered with by said Act.

31. The Court erred in not holding that it is the right of the trustee, the claimant herein, before the trust fund is taken from its possession, to have its day in Court, to have cited there all persons entitled to the fund, to have its accounts examined and passed upon, and to have the amount of its expenses and compensation adjudicated and paid from the fund itself.

32. The Court erred in not holding that it is the right of the trustee to have the Court direct the distribution of the fund held by it and thereupon to discharge the trustee.

33. The Court erred herein in founding its judgment upon a construction of the Trading with the Enemy Act which deprives the claimant of its property without due process of law in violation of the Constitution of the United States.

Wherefore this claimant, individually and as trustee, prays that the said decree herein be reversed; and that said United States District Court be directed to enter a decree in accordance with the prayer of the answer of this claimant, adjudging that the securities
57 seized by the Marshal be restored to the custody of this claimant; and, if the Court should determine that the Alien Property Custodian is entitled to the possession of the said property, that the amount due to this claimant for its services and expenses as trustee be paid or allowed to it by this Court from the funds of said trust estate, or that it be adjudged that the said property is subject to the

lien of the trustee therefor; and for such other order or relief in the premises as to the Court shall seem just.

Dated, October 22, 1919.

MILLER, KING, LANE & TRAFFORD,
Proctors for Claimant.

58 *Stipulation on Appeal Record.*

United States District Court, Southern District of New York.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant and Appellee, Libellant,

against

$20,000 PAR VALUE COLORADO & SOUTHERN FIRST MORTGAGE 4% Bonds, Maturing in 1929, and Other Property; Central Union Trust Company of New York, Individually and as Trustee under a Deed of Trust Made by Frankfort General Insurance Company, Claimant and Appellant.

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated, November 28, 1919.

MILLER, KING, LANE & TRAFFORD,
Proctors for Claimant-Appellant.

FRANCIS G. CAFFEY,
Proctor for Libellant-Appellee.

59 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant and Appellee, Libellant,

against

$20,000 PAR VALUE COLORADO & SOUTHERN FIRST MORTGAGE 4% Bonds, Maturing in 1929, and Other Property; Central Union Trust Company of New York, Individually and as Trustee under a Deed of Trust Made by Frankfort General Insurance Company, Claimant and Appellant.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern Dis-

trict of New York, this 1st day of December, in the year of our Lord one thousand nine hundred and nineteen and of the Independence of the said United States the one hundred and forty-fourth.

ALEX. GILCHRIST, Jr.,
Clerk.

60 United States Circuit Court of Appeals, for the Second Circuit.

No. 157-158-169-170—October Term, 1919.

Argued January 23, 1920.

Decided March 3, 1920.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant and Appellee,

vs.

$20,000 PAR VALUE COLORADO & SOUTHERN FIRST MORTGAGE 4% Bonds, Maturing in 1929, and Other Property; Central Union Trust Company of New York, Individually and as Trustee under a Deed of Trust Made by Frankfort General Insurance Company, Claimant and Appellant.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant and Appellee,

61 vs.

$100,000 PAR VALUE ST. PAUL KANSAS CITY SHORT LINE RAILroad Company First Mortgage 4½% Bonds, Maturing in 1941, and Other Property; Edwin G. Merrill, James Speyer, and Frank A. Vanderlip, Individually and as Trustees under a Deed of Trust Made by Allianz Insurance Company, Claimants and Appellants.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant-Appellee,

vs.

$50,000 PAR VALUE UNITED STATES GOVERNMENT 4% REGISTERED Bonds, Maturing in 1925, and Other Bonds, Stocks and Other Securities; J. Markham Marshall, Walter T. Rosen, and Rudolf Metz, as Trustees, etc., Claimants-Appellants.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant-Appellee,

vs.

$25,000 PAR VALUE CHESAPEAKE & OHIO RAILWAY 4½% Convertible Bonds, and Other Bonds, Stocks and Other Securities; J. Markham Marshall, Walter T. Rosen and Rudolf Metz, as Trustees, etc., Claimants-Appellants.

Appeals from the District Court of the United States for the Southern District of New York.

Before Ward, Hough and Manton, Circuit Judges.

62 Francis G. Caffey, United States Attorney, for Libellant.

Perry D. Trafford for Claimants-Appellants Central Union Trust Co. and Edwin G. Merrill, et al.

Emory R. Buckner and H. H. Nordlinger for J. Markham Marshall et al., Claimants-Appellants.

WARD, *C. J.*:

Connecticut and Massachusetts require, as do almost all the states, that insurance companies of foreign nations, before doing business in the state, shall deposit funds or securities for the protection of the company's policy holders and creditors in the United States. The exact terms of the statutes need not be stated.

The Munich Re-Insurance Company, a German corporation did deposit a quantity of securities with trustees in conformity with the law of the State of Connecticut.

The Frankfort General Insurance Company and the Allianz Insurance Company, both German Companies, deposited securities with trustees in conformity with the requirements of the law of Massachusetts.

It will not be necessary to set out the terms of the trusts at length; it is enough to say that although the income of the securities is payable to the Companies and they can withdraw them or any of them upon substituting others equally good, and can change the trustees, still the trustees hold the securities in trust to pay the claim of any policy holder or creditor admitted to be due by the Company or established by the claimant in due course of law.

It is apparent that the trustees hold primarily for the benefit of the policy holders and creditors, and secondarily for the benefit of the Companies; but their duties are active, and they are not merely lien holders. The Companies cannot take the securities
63 out of their possession until the rights, absolute or contingent, of all policy holders and creditors in this country are secured, and in the meantime the trustees have the active duty

of collecting and paying over the income, investing and reinvesting and paying claims properly proved.

The President, through the Secretary of the Treasury, issued licenses to the Companies in question, not to continue to do business in the United States, but for the purpose of being liquidated.

In November, 1918, the Alien Property Custodian filed libels of information in the District Court of the United States for the Southern District of New York against the securities in question, alleging his demand for the same of the trustees and their refusal, and praying the Court to order the United States Marshal to seize the same and deliver them to him to be held and applied in accordance with law.

The Court made the decrees prayed for and the securities have been seized by the Marshal and delivered to the Alien Custodian; the trustees appeal

We have no doubt of the right of the Alien Custodian to apply to the Court for aid: if he did not know where the securities were he would evidently be entitled to the aid of the Court to compel the trustees to discover and deliver them. In this case he did know where they were, but it was much more orderly and decent to obtain possession by the aid of the Court than to seize them by violence and the strong hand. Section 17 of the Act of October 6, 1917, 40 Statutes at Large, 411, known as the Trading with the Enemy Act, gives the Court full power in the premises:

"That the district courts of the United States are hereby given jurisdiction to make and enter all such rules as to notice and otherwise, and all such orders and decrees, and to issue such process as may be necessary and proper in the premises to enforce the provisions of this Act, with a right of appeal from the final order or decree of such court as provided in Sections one hundred
64 and twenty-eight and two hundred and thirty-eight of the Act of March third, nineteen hundred and eleven, entitled 'An Act to codify, revise, and amend the Laws relating to the judiciary.'"

The material parts of Section 7 (*c*) of the Act as amended November 4, 1918, 40 Statutes at Large, 1020, read:

"(*c*) If the President shall so require any money or other property, including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade-marks, choses in action, the rights and claims of every character and description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, which the President, after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered, and disposed of as elsewhere provided in this Act." • • •

"The sole relief and remedy of any person having any claims to any money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this Act, and in the event of sale or other disposition of such property by the Alien Property Custodian, shall be limited to and enforced against the net proceeds received therefrom and held by the Alien Property Custodian or by the Treasurer of the United States." * * *

The constitutionality of the Act under the war powers of
65 Congress is admitted, the dispute between the parties being as to the construction of it.

The trustees-claimants contend that the Alien Custodian can seize only property belonging wholly to alien enemies; that he stands in their shoes and can get no more than they could themselves.

On the other hand, the Alien Custodian contends that, the President having delegated his authority to him under Section 5 of the Act, he can conclusively determine what property is liable to seizure as being that of an alien enemy.

We agree with the Alien Custodian, and cannot read the perfectly plain language of 7 (*c*) in any other way. As all the facts were known and undisputed they amounted to an investigation by the Alien Custodian. If persons not alien enemies, or allies of alien enemies, were given no means to protect their interests in such property the seizure would be unconstitutional as without due process of law; but they are given such remedies under Section 9:

"That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian hereunder, and held by him or by the Treasurer of the United States, may file with the custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United
66 States or of the interest therein to which the President shall determine said claimant is entitled: Provided, however, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claim-

ant shall have filed the notice as above required and shall have made no application to the President, said claimant may, at any time before the expiration of six months after the end of the war institute a suit in equity in the Supreme Court of the District of Columbia or in the District Court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if suit shall be so instituted then the money or other property of the enemy, or ally of enemy, against whom such interest, right, or title is asserted, or debt claimed, shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant or by the Alien Property Custodian or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant, or suit otherwise terminated * * *."

The Alien Custodian takes possession subject to the rights of innocent persons. Section 12, and amended March 28, 1918, 40 Statutes at Large, 460 provides:

"The Alien Property Custodian shall be vested with all
67 of the powers of a common-law trustee in respect of all property, other than money, which has been or shall be, or which has been or shall be required to be conveyed, transferred, assigned, delivered, or paid over to him in pursuance of the provisions of this Act, and, in addition thereto, acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, shall have power to manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights or powers which may be or become appurtenant thereto or to the ownership thereof in like manner as though he were the absolute owner thereof: * * *"

It is obviously of the utmost importance that in time of war enemy property should be put into the possession of government; on the other hand, no great harm can come to the interests of innocent persons since the possession and management of the property by the Alien Custodian is under the control of the President by regulation and of the courts by decree. Policy holders or creditors may proceed to protect their rights under Section 9, or the trustees may do so for them.

We do not think that the trustees-claimants are mere lien holders under Section 8 of the Act and as such to be entitled to retain possession of the property in question; they are as stated above, trustees with active duties, and not lien holders within the meaning of

the section at all. It clearly protects the lien holders and especially the vast amount of loans against collateral, any interference with which would cause great injury to banks, trust companies and stock brokers, and produce disturbance of business generally.

The decrees are affirmed.

HOUGH, *C. J.* concurs in result.

68 At a Stated Term of the United States Circuit Court of Appeals in and for the Second Circuit, held at the Court Rooms, in the Post Office Building, in the City of New York, on the 13th Day of March, One Thousand Nine Hundred and Twenty.

Present: Hon. Henry G. Ward, Hon. Charles M. Hough, Hon. Martin T. Manton, Circuit Judges.

FRANCIS P. GARVAN, as Alien Property Custodian, etc., Libellant-Appellee,

v.

$20,000 PAR VALUE COLORADO & SOUTHERN BONDS, etc., Central Union Trust Company of New York, Individually, etc., Claimant-Appellant.

Appeal from the District Court of United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of said District Court be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

H. G. W.

C. M. H.

69 [Endorsed:] United States Circuit Court of Appeals. Second Circuit. F. P. Garvan v. $20,000 Bonds. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Mar. 16, 1920. William Parkin, Clerk.

70 United States Circuit Court of Appeals for the Second Circuit.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant and Appellee,

against

$20,000 PAR VALUE COLORADO & SOUTHERN FIRST MORTGAGE 4% Bonds, Maturing in 1920, and Other Property; Central Union Trust Company of New York, Individually and as Trustee under a Deed of Trust Made by Frankfort General Insurance Company, Claimant and Appellant.

Petition for Writ of Error.

To the Judges of the United States Circuit Court of Appeals for the Second Circuit:

Now comes the Claimant-Appellant, by its attorneys, and complains that in the record of the proceedings and also in the rendition of the order for mandate of the United States Circuit Court of Appeals for the Second Circuit, sitting in New York City, in the State of New York, in the above styled and numbered cause on the 3rd day of March, A. D. 1920, affirming the decree of the United States District Court for the Southern District of New York in said cause, a manifest error has intervened to the great damage of the petitioner; that the jurisdication of the District Court of the United States for the Southern District of New York in the said cause did not depend upon diversity of citizenship of the parties but depended upon the fact that it arose under the laws of the United States, and that the case did not arise under the patent laws, under the trade-mark
71 laws, under the copy-right laws, under the revenue laws, nor under the criminal laws of the United States, nor was the said case an admiralty case, nor was the cause one arising under "An Act to establish a uniform system of bakruptcy throughout the United States," nor one arising under "An Act relating to the liability of common carriers by railroad to their employees in certain cases," nor one arising under "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," nor one arising under "An Act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes," nor one arising under any amendment or supplement to any of the afore-mentioned Acts; that the amount involved in the case exceeds the sum of one thousand dollars ($1,000), besides costs, and that this is not a case where the judgment or decree of the Circuit Court of Appeals is made final.

Wherefore petitioner prays for an allowance of the writ of error to the end that the cause may be carried to the Supreme Court of the

United States, and the petitioner prays for a supersedeas of said judgment and such other process as is necessary to perfect the writ of error prayed for to the end that the error therein may be corrected.

Dated, March 17, 1920.

MILLER, KING, LANE & TRAFFORD,
Proctors for Claimant-Appellant.

Office and P. O. Address, 80 Broadway, Borough of Manhattan, New York City.

72 [Endorsed:] United States Circuit Court of Appeals for the Second Circuit. Francis P. Garvan, as Alien Property Custodian, Libellant-Appellee, against $20,000 Par Value Col. & So. Bonds, etc. Central Union Trust Company of New York, etc., Claimant-Appellant. Copy. Petition for Writ of Error. Miller, King, Lane & Trafford, Proctors for Claimant-Appellant, 80 Broadway, Borough of Manhattan, New York City. Filed May 25, 1920.

73 United States Circuit Court of Appeals for the Second Circuit.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant and Appellee,

against

$20,000 PAR VALUE COLORADO & SOUTHERN FIRST MORTGAGE 4% BONDS, Maturing in 1920, and Other Property; Central Union Trust Company of New York, Individually and as Trustee Under a Deed of Trust Made by Frankfort General Insurance Company, Claimant and Appellant.

Order Allowing Writ of Error.

The Claimant-Appellant having filed its petition for a writ of error from the Supreme Court of the United States to this Court, to review the order for mandate of this Court made and entered on March 16th 1920, it is

Ordered that the said writ of error of said claimant-appellant to review said order for mandate, be, and the same is hereby allowed; and it is

Further ordered that the claimant-appellant file a bond in the sum of two hundred & fifty dollars on or before the 26th day of May, 1920, the same to act as a supersedeas bond and also as a bond for costs; by agreement of counsel; and it is

Further ordered that all proceedings herein be stayed saving those connected with said writ of error, pending the final determination thereof.

Dated, May 24, 1920.

H. G. WARD,
United States Circuit Judge.

74 [Endorsed:] United States Circuit Court of Appeals for the Second Circuit. Francis P. Garvan, as Alien Property Custodian, Libellant-Appellee, against $20,000 Par Value Col. & So. Bonds, etc., Central Union Trust Company of New York, etc., Claimant-Appellant. Copy. Order Allowing Writ of Error. Miller, King, Lane & Trafford, Proctors for Claimant-Appellant, 80 Broadway, Borough of Manhattan, New York City. Filed May 25, 1920.

75 United States Circuit Court of Appeals for the Second Circuit.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant and Appellee,

against

$20,000 PAR VALUE COLORADO & SOUTHERN FIRST MORTGAGE 4% BONDS, Maturing in 1920, and Other Property; Central Union Trust Company of New York, Individually and as Trustee Under a Deed of Trust Made by Frankfort General Insurance Company, Claimant and Appellant.

Assignment of Errors.

Now comes the claimant in the above entitled cause and files the following assignment of errors upon which it will rely upon its prosecution of the appeal in the above entitled cause from the order for mandate of this Honorable Court made and entered on March 16th 1920.

1. The Court erred in affirming the decree of the District Court of the United States for the Southern District of New York, made and entered on October 6, 1919, granting the libellant a decree on the pleadings.

2. The Court erred in not reversing the decree of the District Court of the United States for the Southern District of New York, made and entered on October 6, 1919, granting the libellant a decree on the pleadings.

3. The Court erred in holding that the libellant was entitled to the relief granted herein or to any relief, and in not holding that the said libel should be dismissed.

76 4. The Court erred in adjudging that the libellant was entitled to the possession of the property described in the libel.

5. The Court erred in adjudging that the libellant was entitled to the possession of the property described in the libel to be by him held, administered and accounted for as Alien Property Custodian.

6. The Court erred in adjudging that the United States Marshal for the Southern District of New York should deliver to the libellant the said property described in the libel.

7. The Court erred in holding that, under the provisions of the Trading with the Enemy Act, the libellant is entitled to the possession of the property described in the libel.

8. The Court erred in holding that the Trading with the Enemy Act gave to the libellant any authority or jurisdiction over the property described in said libel.

9. The Court erred in not holding that the acts of the libellant and of A. Mitchell Palmer, his predecessor as Alien Property Custodian, which related to the property libelled in this proceeding, were not done pursuant to the provisions of the Trading with the Enemy Act.

10. The Court erred in not holding that the Trading with the Enemy Act does not authorize the seizure of property of American citizens because an enemy has some right in or claim against it.

11. The Court erred in not holding that section 7*c* of the Trading with the Enemy Act is the only portion of the Act which defines the property which may be seized by or shall be transferred to
77 the Alien Property Custodian.

12. The Court erred in not holding that the only property which the Alien Property Custodian is entitled to seize is property owned by enemies and the rights and claims of enemies in or against property which is owned by American citizens or in which American citizens have the right of possession.

13. The Court erred in not holding that the claimant is the owner of the legal title to the property described in the libel.

14. The Court erred in not holding that the property described in the libel was not property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of any enemy or an ally of enemy within the contemplation of the Trading with the Enemy Act.

15. The Court erred in not holding that the property described in the libel was not property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of any enemy or an ally of enemy within the contemplation of the Trading with the Enemy Act and that said property was not liable therefore to seizure pursuant to said act.

16. The Court erred in holding that although the property described in the libel was not property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of any enemy or an ally of enemy within the contemplation of the Trading with the Enemy Act, it was nevertheless liable to seizure pursuant to said Act; and that the determination of the Alien Property Custodian that said property is liable to seizure as belonging to an alien enemy is conclusive.

78 17. The Court erred in holding that the deed of trust herein did not create a lien which entitled the trustee, this claimant, to continue to hold the res under the provisions of the Trading with the Enemy Act.

18. The Court erred in holding that the trustee herein is not of the class whose rights are preserved by the Trading with the Enemy Act and are consequently not entitled to retain possession as against the Alien Property Custodian.

19. The Court erred in not holding that the rights of this trustee and of those having a primary right as beneficiaries in the trust estate were such as to require that the trustee retain possession of the property libelled herein.

20. The Court erred in holding that the right of the trustee under the trust deed herein to hold the property conveyed to it under said trust was not covered or protected by the terms of said section 8-*a*.

21. The Court erred in holding that the Trading with the Enemy Act gave to the Alien Property Custodian the right to obtain possession of enemy owned property irrespective of the existence of liens thereon, unless such liens may be disposed of on notice or presentation or demand.

22. The Court erred in holding that section 8-*a* of the Trading with the Enemy Act preserved the rights and remedies of lienors only in a limited class of cases, to wit: those where the mortgage, pledge or lien or other right in the nature of security in property of an enemy or ally of enemy was one which by law or by the terms of the instrument creating such mortgage, pledge or lien or right, may be disposed of on notice or presentation or demand.

79 23. The Court erred in holding that because the rights of the claimant herein as trustee were not expressly excepted from the operation of section 8-*a* of the Trading with the Enemy Act they became subject to seizure.

24. The Court erred in holding that the knowledge by the libellant of all the facts was equivalent to the investigation by him required by section 7-*c* of the Trading with the Enemy Act.

25. The Court erred in not holding that the investigation contemplated by section 7-*c* of the Trading with the Enemy Act includes investigation not only of the questions of fact involved but also of the questions of law involved, and that consequently the mere fact that the libellant is alleged to have known all the pertinent facts does not establish that he has made such investigation as is contemplated by said Act.

26. The Court erred in not holding that the investigation and determination of the libellant were void and without jurisdiction in that the said libellant had no jurisdiction of the property libelled because it was not moneyed or other property or right or claim of any

character or description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of any enemy or ally of enemy as specified in the Trading with the Enemy Act.

27. The Court erred in not holding that the determination of the libellant was the determination solely of a question of law and therefore reviewable by the court.

28. The Court erred in not holding that the claimant was entitled to continue to hold the property described in the libel until the purposes for which the trust had been created had been completed.

80 29. The Court erred in not holding that the claimant has a lien upon the property described in the libel for the value of its services and the amount of its expenses as trustee under the trust deed made by the Frankfort General Insurance Company.

30. The Court erred in not holding that the claimant is entitled to the possession of the property described in the libel for the purpose of enforcing its lien thereon for the value of its services and the amount of its expenses as trustee under the trust deed made by the Frankfort General Insurance Company.

31. The Court erred in not holding that the claimant is entitled to retain possession of a part of the property described in the libel sufficient to satisfy its claims for the value of its services and the amount of its expenses as trustee under the trust deed.

32. The Court erred in not holding that the trustee has a lien upon the fund for its compensation and the amount of its expenses, including counsel fees, and that its right to retain the libelled property in its possession to satisfy the said lien is protected by the Trading with the Enemy Act or is not interfered with by said Act.

33. The Court erred in not holding that it is the right of the trustee, the claimant herein, before the trust fund is taken from its possession, to have its day in court, to have cited there all persons entitled to the fund, to have its accounts examined and passed upon, and to have the amount of its expenses and compensation adjudicated and paid from the fund itself.

34. The Court erred in not holding that it is the right of the trustee to have the Court direct the distribution of the fund held
81 by it and thereupon to discharge it as trustee.

35. The Court erred in refusing to hold that the Alien Property Custodian can seize only such interest in property as is vested in alien enemies; that he stands in their shoes and can take no more than they could themselves.

36. The Court erred in not holding that the Trading with the Enemy Act could not without contravening the due process clause of the Constitution authorize the Alien Property Custodian to seize by judicial proceeding property not owing or belonging to, or held

for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy.

Wherefore claimant prays that said order for mandate, as well as the decree of the District Court, be reversed and that the said Circuit Court of Appeals for the Second Circuit be ordered to enter a decree reversing the decree of the District Court of the United States for the Southern District of New York, and directing that a decree be entered adjudging that the property libelled herein be restored to the custody of this claimant and giving to this claimant such other and further relief as may be just.

MILLER, KING, LANE & TRAFFORD,
Proctors for Claimant.

82 [Endorsed:] United States Circuit Court of Appeals for the Second Circuit. Francis P. Garvan, as Alien Property Custodian, Libellant-Appellee, against $20,000 Par Value Col. & So. Bonds, etc.; Central Union Trust Company of New York, etc., Claimant-Appellant. Copy. Assignment of Errors. Miller, King, Lane & Trafford, Proctors for Claimant-Appellant, 80 Broadway, Borough of Manhattan, New York City. Filed May 25, 1920.

83 District Court of the United States of America for the Southern District of New York, in the Second Circuit.

FRANCIS P. GARVAN, as Alien Property Custodian, Libellant and Appellee,

against

$20,000 PAR VALUE COLORADO & SOUTHERN FIRST MORTGAGE 4% Bonds, Maturing in 1920, and Other Property; Central Union Trust Company of New York, Individually and as Trustee under a Deed of Trust Made by Frankfort General Insurance Company, Claimant and Appellant.

Bond on Appeal.

Know all men by these presents, That Central Union Trust Company of New York, individually and as Trustee under a Deed of Trust made by Frankfort General Insurance Company, as principal, and National Surety Company, a corporation under the laws of the State of New York, with its principal place of business at No. 115 Broadway, in the City, County and State of New York, as surety, are held and firmly bound unto the above named Francis P. Garvan, as Alien Property Custodian, in the sum of Two Hundred and Fifty — ($250.00) to be paid to the said Francis P. Garvan, as Alien Property Custodian for the payment of which well and truly to be made, said principal and surety bind themselves, their heirs, executors, administrators and assigns, jointly and severally, firmly by these presents. Sealed and dated the 24th day of May, 1920.

Whereas, the above named Central Union Trust Company of New

York, individually and as Trustee under a Deed of Trust made by Frankfort General Insurance Company, has prosecuted a writ of error to the United States Supreme Court, to review the order for mandate rendered in the above entitled suit, by a Judge of the Circuit Court of Appeals of the United States for the Second Circuit.

Now, therefore, the condition of this obligation is such that if the above named Central Union Trust Company of New York, individually and as Trustee under a Deed of Trust made by Frankfort General Insurance Company, shall prosecute said writ of error to effect, and answer all damages and costs if it fail to make its plea good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

CENTRAL UNION TRUST COMPANY
OF NEW YORK,
By B. A. MORTON,
Vice President.

[SEAL.] Attest:
F. W. HARTSHORNE,
Ass't Secretary.

NATIONAL SURETY COMPANY,
By H. E. EMMETT,
Resident Vice President.

[SEAL.] Attest:
E. M. McCARTHY,
Resident Assistant Secretary.

84 *Affidavit, Acknowledgment, and Justification by Guarantee or Surety Company.*

STATE OF NEW YORK,
County of New York, ss:

On this 24th day of May, 1920, before me personally came H. E. Emmett, known to me to be the Resident Vice-President of National Surety Company, the corporation described in and which executed the foregoing Bond of Central Union Trust Company of New York, individually, etc., as surety and who, being by me duly sworn, did depose and say that he resides in the City of New York, State of New York; that he is the Resident Vice-President of said Company, and knows the corporate seal thereof; that the said National Surety Company is duly incorporated under the laws of the State of New York; that said Company has complied with the provisions of the Act of Congress of August 13, 1894, that the seal affixed to the within Bond of Central Union Trust Company of New York, individually, etc., is the corporate seal of said National Surety Company, and was thereto affixed by authority of the Board of Directors of said Company, and that he signed his name thereto by like authority as Resident Vice-President of said Company, and that he is acquainted with E. M. McCarthy and knows him to be the Resident Assistant Secretary of said Company; and that the signature of said E. M. McCarthy subscribed to said Bond is in the genuine handwriting of said E. M.

McCarthy, and was thereto subscribed by order and authority of said Board of Directors, and in the presence of said deponent; and that the assets of said Company, unencumbered and liable to execution exceed its debts and liabilities of every nature whatsoever, by more than the sum of Ten Million dollars.

W. E. EMMETT.
(Deponent's Signature.)

Signed, sworn to, and acknowledged before me this 24th day of May, 1920.

J. A. HERRMANN, *N. P.*

STATE OF NEW YORK,
County of New York, ss:

On this 24th day of May, 1920, before me personally came B. A. Morton; to me known, who, being by me duly sworn, did depose and say that he resides in New York City; that he is a Vice President of Central Union Trust Company of New York the corporation described in and which executed the foregoing instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Trustees of the said corporation, and that he signed his name to the said instrument by like order.

WILLIAM D. BICKHAM,
Notary Public, New York County.

N. Y. Co. Clerk No. 645, Reg. No. 1675.
Kings Co. Clerk No. 110, Reg. No. 1292.

Commission expires Mar. 30th, 1921.

[Endorsed:] District Court of United States, Southern District of New York. Francis P. Garvan, as Alien Property Custodian, against Central Union Trust Company of New York, individually, etc. Bond on Appeal. Surety, National Surety Company. Miller, King, Lane & Trafford, Proctors for Claimant-Appellant, 80 Broadway, N. Y. I approve of the *written* Bond, and of the sufficiency of the surety thereon. H. G. Ward, U. S. C. J.

ss UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 84 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Francis P. Garvan, as Alien Property Custodian, against $20,000 Par Value Colorado & Southern 1st Mortgage 4% Bonds, etc., as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern Dis-

trict of New York, in the Second Circuit, this 14 day of June in the year of our Lord One Thousand Nine Hundred and Twenty and of the Independence of the said United States the One Hundred and forty-fourth.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk.

86 Supreme Court of the United States.

CENTRAL UNION TRUST COMPANY OF NEW YORK, Individually and as Trustee under a Deed of Trust Made by Frankfort General Insurance Company, Plaintiff in Error,

against

FRANCIS P. GARVAN, as Alien Property Custodian, Defendant in Error.

Writ of Error.

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Judges of the Circuit Court of Appeals of the United States for the Second Circuit, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the United States Circuit Court of Appeals before you, or some of you, in an action entitled Garvan vs. $20,000 par value bonds, etc., between Francis P. Garvan, as Alien Property Custodian, libellant-appellee, and Central Union Trust Company of New York, individually and as Trustee under a Deed of Trust made by Frankfort General Insurance Company, claimant-appellant, a manifest error hath happened, to the great damage of the said Central Union Trust Company of New York, individually and as Trustee under the said Deed of Trust, as is said and appears by its complaint, we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you,

87 if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States ought to be done.

Witness, the Honorable Edward Douglass White, Chief Justice of the United States, this 24th day of May, in the year of our Lord one thousand nine hundred and twenty, and of the Independence of the United States the one hundred and forty-fourth.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

55 [Endorsed:] Supreme Court of the United States. Central Union Trust Company of New York, individually and as Trustee under a Deed of Trust Made by Frankfort General Insurance Company, Plaintiff in error, against Francis P. Garvan, as Alien Property Custodian, Defendant in error. Writ of Error. Miller, King, Lane & Trafford, Attorneys for Plaintiff in error, 80 Broadway, Borough of Manhattan, New York City. Service of a copy of the within Writ of Error is hereby admitted May —, 1920. —— ——, Attorney for Defendant in Error.

[Stamped:] United States Circuit Court of Appeals Second Circuit. Filed May 25, 1920. William Parkin, Clerk.

[Stamped:] A copy of the within paper has been this day received at this office. May 25, 1920. Francis G. Caffey, U. S. Attorney.

56 Supreme Court of the United States.

CENTRAL UNION TRUST COMPANY OF NEW YORK, Individually and as Trustee under a Deed of Trust Made by Frankfort General Insurance Company, Plaintiff in Error,

against

FRANCIS P. GARVAN, as Alien Property Custodian, Defendant in Error.

Citation.

By the Honorable One of the Judges of the United States Circuit Court of Appeals for the Second Circuit, to Francis P. Garvan, as Alien Property Custodian, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held in the City of Washington, District of Columbia, on the 22nd day of June, A. D. 1920, pursuant to an order allowing a writ of error, filed and entered in the Clerk's office of the United States Circuit Court of Appeals for the Second Circuit, to review an order for mandate, signed, filed and entered on the 16th day of March, 1920, in that certain suit entitled Garvan vs. $20,000 par value bonds, etc., wherein Central Union Trust Company of New York, individually and as Trustee

under a Deed of Trust made by Frankfort General Insurance Company, is Claimant-Appellant, and you are Libellant-Appellee, to show cause, if any they- be, why the order and decree rendered against the said Claimant-appellant as in said order allowing
90 a writ of error mentioned, should not be corrected, and why justice should not be done to the parties in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the Southern District of New York, Second Circuit, this 24 day of May, in the year of our Lord one thousand nine hundred and twenty, and of the Independence of the United States the one hundred and forty-fourth.

H. G. WARD,
Judge of the United States Circuit Court of Appeals for the Second Circuit.

91 [Endorsed.] United States Supreme Court. Central Union Trust Company of New York, individually and as trustee, etc., Plaintiff in Error, against Francis P. Garvan, as Alien Property Custodian, Defendant in Error. Citation. Miller, King, Lane & Trafford, Attorneys for Plaintiff in Error, 80 Broadway, Borough of Manhattan, New York City. Service of a copy of the within Citation is hereby admitted, May —, 1920. ——— ———, Attorney for Defendant in Error.

[Stamped:] United States Circuit Court of Appeals Second Circuit Filed May 25, 1920. William Parkin, Clerk.

[Stamped:] A copy of the within paper has been this day received at this office. May 25, 1920. Francis G. Caffey, U. S. Attorney.

Endorsed on cover: File No. 27,749. U. S. Circuit Court Appeals, 2d Circuit. Term No. 392. Central Union Trust Company of New York, individually and as trustee, &c., plaintiff in error, vs. Francis P. Garvan, as Alien Property Custodian. Filed June 14th, 1920. File No. 27749.